

US Serial No. 10/552655
Page 9 of 20

Remarks:

Amendments to the specification and claims:

Claims 3, 5, 8, 10, 11, 13, 15, 18 and 19 are pending in this application. By this Amendment, claims 3, 5, 8, 10, 11, 13 and 15 are amended, and claims 7, 12 and 14 are canceled. Claim 8 were amended to depend from claim 3 instead of canceled claim 7; claims 10, 11, 13 and 15 were amended to maintain consistency with claim 3; and claims 13 and 15 were amended to depend from claims 11 and 10, respectively, instead of canceled claims 12 and 14, respectively.

No new matter is added to the application by this Amendment. Support for the features added to claim 1 can be found in canceled claim 7 and within the present specification, as originally filed, at, for example, paragraphs [0041] and [0042] and within present Example 5

Allowable Subject Matter:

Applicant notes with appreciation that claims 10, 14 and 15 have been identified as containing allowable subject matter.

Regarding the rejection of claim 3 under 35 USC 102(b) as allegedly being anticipated by US 2,197,479 to Meigs:

Applicants respectfully traverse the rejection of the foregoing claim in view of Meigs.

Prior to discussing the relative merits of the Patent Office's rejection, Applicant points out that unpatentability based on "anticipation" type rejection under 35 USC 102(b) requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee"). Anticipation requires that a *single reference* [emphasis added] describe the claimed invention with sufficient precision and detail to establish that the subject

US Serial No. 10/552655
Page 10 of 20

matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

The principle of "inherency," in the law of anticipation, requires that any information missing from the reference would nonetheless be known to be present in the subject matter of the reference, when viewed by persons experienced in the field of the invention. However, "anticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation, [or the reference] cannot inherently anticipate the claims." *Transclean Corp. v. Bridgewood Servs., Inc.*, 290 F.3d 1364, 1373 [62 USPQ2d 1865] (Fed. Cir. 2002); *Hitzeman v. Rutter*, 243 F.3d 1345, 1355 [58 USPQ2d 1161] (Fed. Cir. 2001) ("consistent with the law of anticipation, an inherent property must necessarily be present in the invention described by the count, and it must be so recognized by persons of ordinary skill in the art"); *In re Robertson*, 169 F.3d 743, 745 [49 USPQ2d 1949] (Fed. Cir. 1999) (that a feature in the prior art reference "could" operate as claimed does not establish inherency).

Thus when a claim limitation is not explicitly set forth in a reference, evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co.*, 948 F.2d at 1268. It is not sufficient if a material element or limitation is "merely probably or possibly present" in the prior art. *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 [63 USPQ2d 1597] (Fed. Cir. 2002). See also, *W.L. Gore v. Garlock, Inc.*, 721 F.2d at 1554 (Fed. Cir. 1983) (anticipation "cannot be predicated on mere conjecture respecting the characteristics of products that might result from the practice of processes disclosed in references"); *In re Oelrich*, 666 F.2d 578, 581 [212 USPQ 323] (CCPA 1982) (to anticipate, the asserted inherent function must be present in the prior art).

US Serial No. 10/552655
Page 11 of 20

The Patent Office alleges that Meigs discloses each and every feature of claim 3. Applicants respectfully disagree with the allegations by the Patent Office.

Claim 3 was amended so that compounds wherein R is cycloalkylalkoxyalkyl (see canceled option (d) of claim 3) are not included in claim 3. Moreover, claim 3 was amended so that all compounds wherein R is optionally substituted with an alkoxy group has been deleted. Moreover, claim 3 was amended to include the features of canceled claim 7 which was not rejected in view of Meigs. The Patent Office acknowledges that Meigs does not teach the features of claim 7 which have been incorporated into claim 3 because the Patent Office fails to reject claim 7 in view of Meigs.

Applicants would like to point out to the Patent Office, that the present claims do not include compounds wherein "*R represents a cycloalkylalky that is optionally substituted with an alkoxygroup*" as indicated by the Patent Office. Instead, the present claims are directed to compounds wherein R represents a cycloalkylalky wherein the cycloalkyl ring is optionally substituted with an alkoxy group.

Moreover, Meigs discloses ether-alcohol carbamates and compositions of matter employing the ether-alcohol carbamates whereby the compositions of matter are particularly useful in the coating of plastic arts and serve as plasticizers or softeners (see col. 1, lines 27-37). Additionally, Meigs discloses that the ether-alcohol carbamates are generally colorless, odorless, essentially tasteless, substantially non-volatile at ordinary temperatures and pressures and non-toxic (see col. 2, line 17-20).

Unlike the presently claimed invention, Meigs' ether-alcohol carbamates are odorless compounds. The odorless ether-alcohol carbamates usable in coating plastic and as plasticizers or softeners according to Meigs do not disclose incorporation of a fragrance ingredient as recited in claim 3. Moreover, the teachings of Meigs, which are directed to

US Serial No. 10/552655
Page 12 of 20

odorless ether-alcohol carbamates, are clearly not relevant to the presently claimed method of manufacturing a fragrance application.

Thus, nowhere does Meigs teach or suggest a method of manufacturing a fragrance application comprising the incorporation as fragrance ingredient of a tertiary non-vinyllic carbamate of formula (I) as recited in amended claim 3.

Because the features of independent claim 3 are not disclosed by Meigs, Meigs cannot anticipate, nor would not have rendered obvious, the features specifically defined in claim 3.

For at least these reasons, claim 3 is patentably distinct from and/or non-obvious in view of Meigs. Reconsideration and withdrawal of the rejection of the claims under 35 USC 102(b) are respectfully requested.

Regarding the rejection of claims 3, 7 and 8 under 35 USC 102(b) as allegedly being anticipated by US 2,460,291 to Hunt et al. (hereinafter "Hunt"):

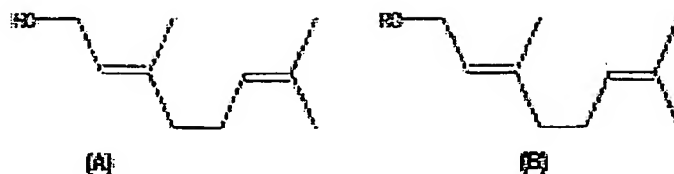
Applicants respectfully traverse the rejection of the foregoing claims in view of Hunt.

The Patent Office alleges that Hunt discloses each and every feature of the foregoing claims. Applicants respectfully disagree with the allegations by the Patent Office.

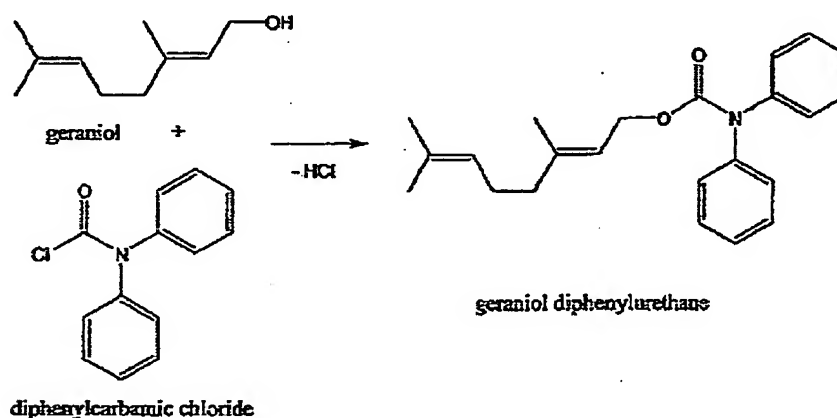
In view of the cancelation of claim 7, this rejection is moot with respect to that claim.

Hunt discloses a chemical process for the production of geraniol (A) and geraniol esters (B) (see col. 1, lines 6-8). Geraniol and geraniol esters having the following formulas:

US Serial No. 10/552655
Page 13 of 20



To confirm that geraniol was prepared by Hunt's process, the derived product, namely, synthetic geraniol was identified by preparing 3-nitophtahalte and diphenylurethane derivatives (see col. 3, lines 17-26), which were found to be identical with the derivatives from natural geraniol. The process for the preparation of the diphenylurethane derivative is depicted below.



Thus, neither the starting compounds nor the end product discloses the tertiary non-vinyllic carbamate of formula (I) as recited in claim 3. For geraniol diphenylurethane, the residues are R (10 C atoms) + R¹ (6 C atoms) + R² (6 C atoms) = 22 C atoms. In contrast, the presently claimed compounds have from 7 to 18 carbon atoms.

Nowhere does Hunt teach or suggest a method of manufacturing a fragrance application comprising the incorporation as fragrance ingredient of a tertiary non-vinyllic carbamate of formula (I) as recited in amended claim 3.

US Serial No. 10/552655
Page 14 of 20

Because the features of independent claim 3 are not disclosed by Hunt, Hunt cannot anticipate, nor would not have rendered obvious, the features specifically defined in claim 3 and dependent claim 8.

For at least these reasons, claims 3 and 8 are patentably distinct from and/or non-obvious in view of Hunt. Reconsideration and withdrawal of the rejection of the claims under 35 USC 102(b) are respectfully requested.

Regarding the rejection of claims 3, 7 and 8 under 35 USC 102(b) as allegedly being anticipated by US 3,966,903 to Torii et al. (hereinafter "Torii"):

Applicants respectfully traverse the rejection of the foregoing claim in view of Torii.

The Patent Office alleges that Torii discloses each and every feature of the foregoing claims. Applicants respectfully disagree with the allegations by the Patent Office.

In view of the cancellation of claim 7, the rejection is moot with respect to that claim.

Torii discloses hair-waving compositions comprising (A) sulfites or bisulfites as the primary waving agent and (B) at least one wave accelerating agent, e.g. alkyl carbamate of the formula R_1R_2NCOOR , wherein R_1 , R_2 , and R , each stand independently for H, CH_3 , C_2H_5 , or C_4H_9 , (see col. 2, lines 44 –53). According to the above-identified definition, 64 ($4 \times 4 \times 4$) carbamates are disclosed, three of these 64 carbamates are given as an example, namely methyl carbamate, ethyl carbamate and ethyl N,N-dimethylcarbamate (see col. 3, lines 24 – 26). Only one carbamate, namely, ethyl carbamate was explicit used. However, ethyl carbamate does not disclose a compound of formula (I) as recited in claim 3.

The only exemplified tertiary carbamate is ethyl N,N-dimethylcarbamate ($R^1 = R^2 =$ methyl (1 C atom); $R =$ ethyl (2 C atoms), thus $R^1 + R^2 + R = 4$ C atoms); however, this compound also fails to disclose a compound of formula (I).

US Serial No. 10/552655
Page 15 of 20

Applicants submit that the accelerating agents possess no unpleasant odor (see col. 3, line 32). However, Applicants respectfully disagree with the Examiner's interpretation that such disclosure indicates that the Torii's compounds are intended to be used as fragrance ingredient because Torii's compounds have a pleasant smell. Instead, Torii's compounds are used because they accelerate the waving process because Torii's compounds are accelerating agents. From Applicants' point of view, Torii, at best, only mentions that Torii's compounds do not possess unpleasant odor because the prior art waving compositions do possess an unpleasant odor (see col. 1, lines 40 – 42). There is nothing in Torii which explicit or inherently teaches that tertiary alkyl carbamates possess a pleasant odor.

Furthermore, Applicants want to point out that nowhere does Torii disclose that the accelerating agents could be combined with other material including perfumes. At best, Torii only mentions that Torii's compositions, namely a hair-waving compositions comprising (A) sulfites or bisulfites as the primary waving agent and (B) at least one wave accelerating agent, may be combined (see col. 4, lines 46–52).

Nowhere does Torii teach or suggest a method of manufacturing a fragrance application comprising the incorporation as fragrance ingredient of a tertiary non-vinyllic carbamate of formula (I) as recited in amended claim 3.

Because the features of independent claim 3 are not disclosed by Torii, Torii cannot anticipate, nor would not have rendered obvious, the features specifically defined in claim 3 and dependent claim 8.

For at least these reasons, claims 3 and 8 are patentably distinct from and/or non-obvious in view of Torii. Reconsideration and withdrawal of the rejection of the claims under 35 USC 102(b) are respectfully requested.

US Serial No. 10/552655
Page 16 of 20

Regarding the rejection of claim 11-13 under 35 USC 103(a) as allegedly being unpatentable over Torii:

Applicants respectfully traverse the rejection of the foregoing claim in view of Torii.

Prior to discussing the merits of the Examiner's position, the undersigned reminds the Examiner that the determination of obviousness under § 103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McNeil-PPC, Inc. v. L. Perrigo Co.*, 337 F.3d 1362, 1368, 67 USPQ2d 1649, 1653 (Fed. Cir. 2003). There must be some suggestion, teaching, or motivation arising from what the prior art would have taught a person of ordinary skill in the field of the invention to make the proposed changes to the reference. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000). A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207, 18 USPQ2d 1016, 1022 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed.

US Serial No. 10/552655

Page 17 of 20

Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). "Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

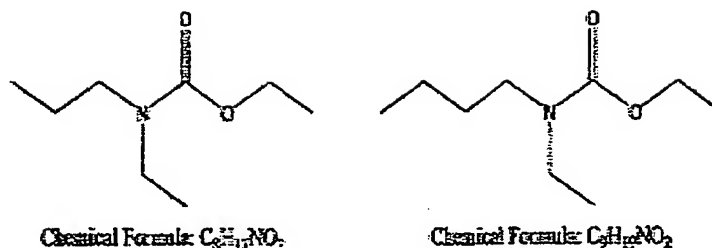
The Patent Office acknowledges that Torii do not disclose employing chemicals in the claim 11 genus. The Patent Office alleges that claims 11-13 are rejected as being obvious in accord with MPEP 2144.09 regarding Homology and Isomerism. The Patent Office also alleges that when a reference's genus employs substituents where R_1 is propyl, and when R_2 and R_3 are ethyl, a homolog of a chemical in the structure table for claim 11 is indicated whereby such structure table chemical being in the center of page 8 of 21 in instant claim 11 where when one of the amine alkyl groups is butyl. Moreover, the Patent Office alleges that it would have been obvious at the time of the invention for one of ordinary skill in the art to have further employed a homolog of the successful chemicals demonstrated by Torii and mixed them in composition comprising perfumes that are indicated to be used for successful body care products that have an odor that is not unpleasant, with a reasonable expectation of success. Applicants respectfully disagree with the allegations by the Patent Office.

In view of the cancellation of claim 12, this rejection is moot with respect to that claim.

Applicants submit that the above-identified compound (R = ethyl; R^1 = ethyl, R^2 = butyl, 5th compound) may be regarded as a homolog or structural isomer of the genus as defined by Torii. However, Applicants submit that this is only relevant with respect to properties which are expected to be similar. And, as already discussed above, Torii clearly does not teach or suggest that Torii's compounds possess an odor nor would a skilled artisan expect Torii's compounds to possess an odor.

US Serial No. 10/552655

Page 18 of 20



Moreover, Applicants would like to further point out that said compound is not explicit disclosed in Torii and is, at best, only construed by the Patent Office.

Torii fails to teach or suggest a method of manufacturing a fragrance application comprising the incorporation as fragrance ingredient of a tertiary non-vinyl carbamate of formula (I) as recited in amended claim 3 from which claims 11 and 13, directly or indirectly, depend.

Because the features of independent claim 3 are not disclosed by Torii, Torii cannot anticipate, nor would not have rendered obvious, the features specifically defined in claim 3 and dependent claims 11 and 13.

For at least these reasons, claims 11 and 13 are patentably distinct from and/or non-obvious in view of Torii. Reconsideration and withdrawal of the rejection of the claims under 35 USC 102(b) are respectfully requested.

Regarding the rejection of claims 5 under 35 USC 103(a) as allegedly being unpatentable over US 3,203,853 to Jager et al. (hereinafter "Jager"):

Applicants respectfully traverse the rejection of the foregoing claims in view of Jager.

US Serial No. 10/552655
Page 19 of 20

The Patent Office alleges that the features of claim 5 are obvious to a skilled artisan in view of the teachings of Jager. Applicants respectfully disagree with the allegations by the Patent Office.

Jager discloses carbamates which are inactive (see col. 1, lines 35 – 39). However, when Jager's carbamates are combined with strongly insecticidal carbamate esters, the carbamate insecticidal effects can be greatly enhanced.

Jager appears to disclose that inactive means non-toxic whereas active means toxic. Accordingly, the Jager's composition remains toxic. There is nothing in Jager which teaches explicitly or implicitly that the inactive carbamates can be used as a fragrance ingredient.

Amended claim 5 does not include compounds wherein R is substituted by an alkoxy group. Only one out of nine preferred embodiments of Jager is a tertiary carbamate ester, namely, 2-isopropyl-3-methylphenyl-N-diisopropylcarbamate. Additionally, the compound of Example (9) does not teach or suggest the specifically defined features of the compound recited in amended claim 5. Thus, Jager fails to teach or suggest the compound of formula (I) as specifically defined in amended claim 5.

Because these features of independent claim 5 are not taught or suggested by Jager, Jager would not have rendered the features of claim 5 obvious to one of ordinary skill in the art.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

US Serial No. 10/552655
Page 20 of 20

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The early issuance of a *Notice of Allowability* is solicited.

PETITION FOR A ONE-MONTH EXTENSION OF TIME

Applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

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02. March 2010
Date:

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CERTIFICATION OF TELEFAX TRANSMISSION:

I hereby certify that this paper is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571 273-8300 on the date shown below:

Allison Ross
Allison Ross

02. march 2010
Date:

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